

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	Case No. 23-34815 (JPN)
GALLERIA 2425 Owner, LLC.	§	
Debtor	§	Chapter 11

**OBJECTION TO CHAPTER 11 TRUSTEE’S MOTION FOR ENTRY OF AN ORDER: (I) APPROVING PROCEDURES FOR THE SALE OF PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIM AND ENCUMBRANCES; (II) SCHEDULING AN AUCTION; (III) AUTHORIZING ENTRY INTO THE STALKING HORSE PURCHASE AGREEMENT; (IV) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES; (V) APPROVING FORM OF NOTICE; AND (VI) GRANTING RELATED RELIEF**

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

COMES NOW 2425 WL, LLC (“Respondent”) and files this Objection to Motion for Entry of an Order for Sale Free and Clear of Liens and would show as follows:

1. The Trustee has filed a motion to approve a sale free and clear of liens (Dkt. #188).
2. The concept of the motion is that the Trustee will market the property owned by the Debtor for an extremely short period of time leading to a sale to the Debtor’s secured creditor by credit bid. This procedure is not in the best interest of the estate.
3. While the Motion describes a two-month bidding process, the actual deadlines provide for a six week marketing process with bids due to be received by June 14, 2024 at 5:00 p.m. The property in this case is a unique office building designed by I.M. Pei. Forty-five days is not sufficient to market a single-family residence let alone an eleven-story building with 281,590 square feet. A video showing the property can be accessed here:  
<https://www.youtube.com/watch?v=eQbNBM9ogvM>.
4. Any marketing period should not begin until the Trustee has made a good faith effort to increase occupancy. At least four prospective tenants have indicated that they are willing to sign leases. However, the Bank has refused to approve such leases with the result that the value of the building will be depressed during the sales process.

5. Although it is not stated expressly in the Motion, the Trustee proposes to allow National Bank of Kuwait to exercise a right to credit bid. This is a mistake and should not be allowed. 11 U.S.C. Sec. 363(k) allows credit bidding unless the court for cause allows otherwise.

Intrinsically, acting "for cause" looks to the court's equity powers that allow the court to balance the interests of the debtor, its creditors, and the other parties of interests in order to achieve the maximization of the estate and an equitable distribution to all creditors.

*In re RML Development, Inc.*, 528 B.R. 150, 155 (Bankr. W.D. Tenn. 2014). The Court may deny credit bidding when there is a bona fide dispute as to the creditor's lien. *In re Daufuskie Island Props., LLC*, 441 B.R. 60 (Bankr. D. S.C. 2010); *In re Figueroa Mt. Brewing, LLC*, 2021 Bankr. LEXIS 1775 (Bankr. C.D. Cal. 2021).

6. Respondent has filed an adversary proceeding seeking equitable subordination of the Bank's lien. The Trustee asserts that this adversary proceeding will have been adjudicated prior to the date of any credit bid. However, the parties are still at the motion to dismiss stage. If the motion to dismiss is denied, then the court will enter a scheduling order, the parties will conduct discovery and a trial will occur at some future date.

7. Additionally, there are good faith claims against the Bank 2425 WL, LLC offered the Trustee \$500,000 plus 10% of recoveries as shown by Exhibit A. A qualified attorney has offered to represent the Trustee in pursuing claims against the Bank on a contingent fee basis as shown by Exhibit B.

8. Allowing the Bank an unlimited credit bid would chill the bidding and would be inequitable. If credit bidding is to be allowed, what is the amount of the permitted credit bid? Would it be the \$18.6 million valuation of the property? Under 11 U.S.C. Sec. 506(b), the Bank's secured claim is limited to the value of its collateral. The Bank has asserted that the collateral is only worth \$18.6 million. By this logic, its right to credit bid should be limited to this amount if the court is willing to allow a credit bid at all. Limiting the Bank's ability to credit bid to a dollar

amount will ensure that the Bank has some skin in the game in the event that it decides to drive up the bidding. It will also motivate third party bidders to appear and bid.

9. If the Bank is allowed to credit bid, it should be required to post a bond in the amount of any credit bid in order to protect the estate in the event that the Bank's lien is ultimately subordinated or denied.

DATED: April 26, 2024.

Respectfully Submitted,

**BARRON & NEWBURGER, P.C.**

7320 N. MoPac Expwy., Suite 400

Austin, Texas 78731

Tel: (512) 476-9103

By: /s/ Stephen W. Sather  
Stephen W. Sather  
State Bar No.

**ATTORNEYS FOR  
CREDITOR, 2425 WL,LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Response was served on the 26th day of April, 2024 to the parties on the attached list.

/s/ Stephen W. Sather  
Stephen W. Sather

Label Matrix for local noticing  
0541-4  
Case 23-34815  
Southern District of Texas  
Houston  
Tue Apr 2 15:56:17 CDT 2024

City of Houston  
Linebarger Goggan Blair & Sampson LLP  
c/o Tara L. Grundemeier  
PO Box 3064  
Houston, TX 77253-3064

Houston Community College System  
Linebarger Goggan Blair & Sampson LLP  
c/o Tara L. Grundemeier  
PO Box 3064  
Houston, TX 77253-3064

4  
United States Bankruptcy Court  
PO Box 61010  
Houston, TX 77208-1010

Ali Choudhry  
1001 West Loop South 700  
Houston, TX 77027-9084

CNA Insurance Co  
PO Box 74007619  
Chicago, IL 60674-7619

City of Houston  
PO Box 1560  
Houston, TX 77251-1560

Datawatch Systems  
4520 East West Highway 200  
Bethesda, MD 20814-3382

Firetron  
PO Box 1604  
Stafford, TX 77497-1604

HNB Construction, LLC  
521 Woodhaven  
Ingleside, TX 78362-4678

2425 WL, LLC  
2425 West Loop South 11th floor  
Houston, TX 77027-4304

Galleria 2425 Owner, LLC  
1001 West Loop South 700  
Houston, TX 77027-9084

Houston ISD  
Linebarger Goggan Blair & Sampson LLP  
c/o Tara L. Grundemeier  
PO Box 3064  
Houston, TX 77253-3064

2425 WL, LLC  
13498 Pond Springs Rd.  
Austin, TX 78729-4422

Ash Automated Control Systems, LLC  
PO Box 1113  
Fulshear, TX 77441-2013

Caz Creek Lending  
118 Vintage Park Blvd No. W  
Houston, TX 77070-4095

City of Houston  
c/o Tara L. Grundemeier  
Linebarger Goggan Blair & Sampson LLP  
PO Box 3064  
Houston, TX 77253-3064

Environmental Coalition Inc  
PO Box 1568  
Stafford, TX 77497-1568

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062-7917

Harris County Tax Assessor  
PO Box 4622  
Houston, TX 77210-4622

CC2 TX, LLC  
c/o Howard Marc Spector  
Spector & Cox, PLLC  
12770 Coit Road Suite 850  
Dallas, TX 75251-1364

(p)HARRIS COUNTY ATTORNEY'S OFFICE  
P O BOX 2928  
HOUSTON TX 77252-2928

National Bank of Kuwait, S.A.K.P., New York

ADT  
PO Box 382109  
Pittsburgh, PA 15251-8109

CFI Mechanical, Inc  
6109 Brittmoore Rd  
Houston, TX 77041-5610

Cirro Electric  
PO Box 60004  
Dallas, TX 75266

Comcast  
PO Box 60533  
City of Industry, CA 91716-0533

Ferguson Facilities Supplies  
PO Box 200184  
San Antonio, TX 78220-0184

Gulfstream Legal Group  
1300 Texas St  
Houston, TX 77002-3509

Houston Community College System  
c/o Tara L. Grundemeier  
Linebarger Goggan Blair & Sampson LLP  
PO Box 3064  
Houston, TX 77253-3064

Houston ISD c/o Tara L. Grundemeier Linebarger Goggan Blair & Sampson LLP PO Box 3064 Houston, TX 77253-3064	Kings 111 Emergency Communications 751 Canyon Drive, Suite 100 Coppell, TX 75019-3857	Lexitas PO Box Box 734298 Dept 2012 Dallas, TX 75373-4298
Logix Fiber Networks PO Box 734120 Dallas, TX 75373-4120	MacGeorge Law Firm 2921 E 17th St Bldg D Suite 6 Austin, TX 78702-1572	Mueller Water Treatment 1500 Sherwood Forest Dr. Houston, TX 77043-3899
National Bank of Kuwait 299 Park Ave. 17th Floor New York, NY 10171-0023	Nationwide Security 2425 W Loop S 300 Houston, TX 77027-4205	Nichamoff Law Firm 2444 Times Blvd 270 Houston, TX 77005-3253
Rodney L. Drinnon 2000 West Loop S, Ste. 1850, Houston, Texas 77027-3744	TKE 3100 Interstate North Cir SE 500 Atlanta, GA 30339-2296	U.S. Trustee's Office 515 Rusk, Suite 3516 Houston, Texas 77002-2604
US Retailers LLC d/b/a Cirro Energy Attention: Bankruptcy Department PO Box 3606 Houston, TX 77253-3606	US Trustee Office of the US Trustee 515 Rusk Ave Ste 3516 Houston, TX 77002-2604	Waste Management PO Box 660345 Dallas, TX 75266-0345
Zindler Cleaning Service Co 2450 Fondren 113 Houston, TX 77063-2314	Ali Choudhri 24256 West Loop South 11th Floor Houston, TX 77027	Christopher R Murray Jones Murray LLP 602 Sawyer St Ste 400 Houston, TX 77007-7510
James Q. Pope The Pope Law Firm 6161 Savoy Drive Ste 1125 Houston, TX 77036-3343	Reese W Baker Baker & Associates 950 Echo Lane Suite 300 Houston, TX 77024-2824	Rodney Drinnon McCathern Houston 2000 W Loop S Ste. 1850 Houston, TX 77027-3744

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Harris County, ATTN: Property Tax Division Harris County Attorney's Office P.O. Box 2928 Houston, TX 77252-2928 United States	(d)Harris County, et al PO Box 2928 Houston, TX 77252
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

Mailable recipients	50
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Bypassed recipients	2
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Total	52
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**Steve Sather**

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**From:** Steve Sather  
**Sent:** Wednesday, April 03, 2024 7:41 PM  
**To:** R. J. Shannon  
**Cc:** Ali @ Jetall  
**Subject:** Galleria 2425  
**Attachments:** 2024.02 Metro Monry Market 50BH Acquisitions LLC 1338.pdf

Here is proof of funds. In addition to offer to purchase Sonder claims for \$100k, my client offers \$500k plus 10% of any recovery to acquire claims against NBK.

## INFORMATION FROM JERRY ALEXANDER

I conducted a review of the applicable documents and an analysis of the facts and circumstances, and have had discussions with people with personal knowledge of the overall situation, and have concluded that it is a very strong case. Consequently, I have convinced this firm to take it on a one-third contingent fee basis. The representation would be at no cost and has a tremendous upside.

One thing that has been missing or underplayed, I believe, is the fact that the Bank of Kuwait chose the law of New York to apply to this situation, which implies a duty of good faith and fair dealing on every contract, and on actions taken after the contract. New York interpretation of good faith and fair dealing absolutely prohibits one party from preventing the performance of another party under the contract, and then claiming breach by the party whose performance was prevented.

That is exactly what the Bank of Kuwait has done, repeatedly, in this so-called banking relationship between it and Galleria 2425.

In my opinion, the cause of action against the Bank of Kuwait should not be underestimated, nor settled with the Bank of Kuwait, unless the Bank of Kuwait is prepared to make substantial payments or concessions to Galleria 2425 so its owners are reasonably compensated.



## FACT SHEET FROM JERRY ALEXANDER

**1.Name**

Jerry Alexander

**2.Employment:**

Passman Jones for 52 years

**3.Primary type of legal work done:**

Business Litigation

**4.Any experience in representing bankruptcy trustee's in adversary proceedings:**

During the last 20 years I have represented approximately 15 different bankruptcy trustee's in the Northern District of Texas in adversary proceedings in Bankruptcy Courts, in Federal District Courts, and in State Courts.

Presently I am representing six United States Panel Trustees in the Northern District of Texas in six separate Adversary proceedings two of which are in their preliminary stages.

Presently, I am in a trial that has been recessed in Judge Morris' Court in the Fort Worth Division of the Northern District, and am in major litigation in Judge Jones' Court in the Northern District (Abilene) and Judge Larson's Court and Judge Jernigan's Court in the Northern District(Dallas).

**5.Do you have any experience in lender liability type litigation.**

Yes, I was lead counsel in the Bailey Tool case which was tried for approximately a month in 2021 before Chief Judge Jernigan in the Northern District which resulted in an \$18 million dollar Judgment in behalf of the Debtor against its primary lender.

I represented James Cunningham who is a Panel Trustee in that case. It was the first successful lender liability judgment in the Northern District of Texas in approximately 17 years and has been the subject of at least twenty-two articles, and as I understand it an entire chapter of a forthcoming bankruptcy textbook, which is very popular and used in law schools will be devoted to that case and Judge Jernigan's 145 page Opinion that she wrote.

**6. Have you had any experience in Bar Activities in Dallas or in the State of Texas (optional)**

I was President of the Dallas Bar Association in 2016, Chairman of the Board of the State Bar of Texas in 2019 and 2020, and was one of two official nominees for President of the State Bar of Texas in 2023.

**7.Are you familiar with the facts and circumstances surrounding Galleria 24245 and the National Bank of Commerce?**

I have no personal knowledge of these since I was not around the parties or this situation when they occurred, but believe I have sufficient understanding to decide if it is a case I would take on a contingent fee basis.

**8. Do you think this is a worthwhile case?**

Yes.

**9. Why?**

I have reviewed the pleadings that were filed in State Court by Mr. Wetwiska about the non-cooperation and outright failures to approve leases so Galleria 2425 could get new tenants and generate revenue.

I reviewed the aftermath of the settlement of that suit which made an impression on me, since I understand the amount of loan was reduced from \$57 million to \$27 million, which is a drop of \$30 million, so obviously the Bank of Kuwait believed there was significant exposure even at that time.

I believe that since that settlement agreement during the time period allowed for Galleria 2425 to find a buyer, the Bank of Kuwait interfered with the sales process so that 2425 could not perform in order for the Bank of Kuwait to foreclose on the building, and perhaps undue what they viewed as a mistake of reducing the debt by \$30 million dollars.

**10. Would you take this case on a contingent fee basis?**

Absolutely I would like to do that and pursue the case at no cost to the Estate.

**JERRY C. ALEXANDER**

214-742-2121 ext. 3579

214-748-7949 fax

[alexanderj@passmanjones.com](mailto:alexanderj@passmanjones.com)

Passman & Jones,  
A Professional Corporation 1201 Elm Street, Suite 2500  
Dallas, TX 75270-2599  
[www.passmanjones.com](http://www.passmanjones.com)



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